

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MARTIN G. WILKINSON,

Plaintiff

v.

NEVADA ATTORNEY GENERAL  
AARON FORD, et al.,

Defendants

Case No.: 3:24-cv-00261-MMD-CSD

**Report & Recommendation of U.S.  
Magistrate Judge**

Re: ECF Nos. 5, 6

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff has filed a first amended complaint (FAC) (ECF No. 5), which the court will now screen pursuant to 28 U.S.C. § 1915(e). He has also filed a motion requesting an extension of time to file motions to allow him to research for further specificity of the Defendants and to clarify other matters in his pleading. (ECF No. 6.)

**I. SCREENING**

**A. Standard**

“[T]he court shall dismiss the case at any time if the court determines that-- (A) the allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)

1 tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the  
2 court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668  
3 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to  
4 state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the  
5 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under  
6 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*,  
7 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

8         The court must accept as true the allegations, construe the pleadings in the light most  
9 favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*,  
10 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less  
11 stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9  
12 (1980) (internal quotation marks and citation omitted).

13         A complaint must contain more than a “formulaic recitation of the elements of a cause of  
14 action,” it must contain factual allegations sufficient to “raise a right to relief above the  
15 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading  
16 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]  
17 a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a  
18 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at  
19 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

20         A dismissal should not be without leave to amend unless it is clear from the face of the  
21 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
22 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
23 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

1 **B. Plaintiff's FAC**

2 Plaintiff's FAC names the following Defendants: (1) Nevada Attorney General Aaron  
3 Ford; (2) Nevada Highway Patrol Officers Kaminski and Baum; (3) Washoe County Sheriff  
4 Darin Balaam; (4) at least three officers at the Parr Facility<sup>1</sup>; (5) Washoe County Administrators  
5 of the Sparks Justice Court; (6) Bailiff Department Supervisor Officer Scott Kreber; (7) Washoe  
6 County Department of Alternative Sentencing staff members.

7 42 U.S.C. § 1983 provides a mechanism for the private enforcement of substantive rights  
8 conferred by the Constitution and federal statutes. Section 1983 "is not itself a source of  
9 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
10 conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (internal quotation marks and citation  
11 omitted).

12 To obtain relief pursuant to section 1983, a plaintiff must establish a "(1) a violation of  
13 rights protected by the Constitution or created by federal statute, (2) proximately caused (3) by  
14 conduct of a 'person' (4) acting under color of state law." *Crumpton v. Gates*, 947 F.2d 1418,  
15 1420 (9th Cir. 1991); *West v. Atkins*, 487 U.S. 42, 48-49 (1988).

16 To adequately plead the section 1983 elements, a complaint must identify what  
17 constitutional right each defendant violated and provide sufficient facts to plausibly support each  
18 violation. *See e.g., Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (noting defendants must  
19 personally participate in misconduct to be liable under section 1983); *see also Hines v. Yousef*,  
20 914 F.3d 1218, 1228 (9th Cir. 2019) (defendant must have "personally played a role in violating  
21 the Constitution.").

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<sup>1</sup> The court will construe the FAC as referring to the Washoe County Detention Facility (WCDF), located at Parr Boulevard in Reno, Nevada.

1           **1. Nevada Attorney General Aaron Ford and Washoe County Sheriff Balaam**

2           Plaintiff's only allegation against Attorney General Aaron Ford is that he is responsible  
3 for the administration of law enforcement agencies in the State of Nevada.

4           Plaintiff's only allegation against Sheriff Balaam is that he is responsible for the  
5 administration of personnel under the Sheriff's Department.

6           "Under section 1983, supervisory officials are not liable for actions of subordinates on  
7 any theory of vicarious liability." *Snow v. McDaniel*, 681 F.3d 978, 989 (9th Cir. 2012) (en  
8 banc) (quoting *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989)). "A supervisor may be  
9 liable only if (1) he or she is personally involved in the constitutional deprivation, or (2) there is  
10 'a sufficient causal connection between the supervisor's wrongful conduct and the constitutional  
11 violation.'" *Id.* (quoting *Hansen*, 885 F.2d at 646).

12           The causal connection can include: "1) [the supervisor's] own culpable action or inaction  
13 in the training, supervision, or control of subordinates; 2) their acquiescence in the constitutional  
14 deprivation of which a complaint is made; or 3) conduct that showed a reckless or callous  
15 indifference to the rights of others." *Lemire v. Cal. Dep't of Corr.*, 726 F.3d 1062, 1085 (9th Cir.  
16 2013) (citations and internal quotation marks omitted). "The requisite causal connection can be  
17 established by setting in motion a series of acts by others, or by knowingly refusing to terminate  
18 a series of acts by others, which the supervisor knew or should have known would cause others  
19 to inflict a constitutional injury." *Id.* (citing *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir.  
20 2011), *cert. denied*, 132 S.Ct. 2101 (Apr. 30, 2012)) (internal quotation marks omitted).

21           In addition, "[s]upervisory liability exists even without overt personal participation in the  
22 offensive act if supervisory officials implement a policy so deficient that the policy 'itself is a  
23 repudiation of constitutional rights' and is 'the moving force of a constitutional violation.'"

1 *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013) (quoting *Hansen*, 885 F.2d at 646)  
2 (internal quotation marks omitted).

3 Plaintiff has not included any factual allegations with respect to either Attorney General  
4 Ford or Sheriff Balaam to state a claim upon which relief may be granted. As Plaintiff has  
5 already been given an opportunity to amend in this regard, and because it appears that he seeks to  
6 name these Defendants only because they are heads of departments, they should be dismissed  
7 with prejudice at this juncture.

## 8 **2. Nevada Highway Patrol Officers Kaminski and Baum**

9 Plaintiff alleges that he was stopped by two Nevada Highway Patrol (NHP) Officers  
10 while walking adjacent to Interstate 80. The officers told him he could not walk there, and  
11 Plaintiff disputed with them whether it was legal to do so, but the officers refused to listen to  
12 him. Plaintiff states that he was accused of making a false statement to obstruct a public official,  
13 but he never made a false statement.

14 First, Plaintiff does not state a claim for relief under the Fourth Amendment based on the  
15 allegations that the officers would not listen to Plaintiff.

16 Second, is unclear whether Plaintiff is attempting to assert a Fourth Amendment claim  
17 against the NHP Officers for false arrest. The Fourth Amendment protects “[t]he right of the  
18 people to be secure in their persons, houses, papers and effects, against unreasonable searches  
19 and seizures.” U.S. Const. amend IV. “A claim for unlawful arrest is cognizable under § 1983 as  
20 a violation of the Fourth Amendment provided the arrest was without probable cause or other  
21 justification.” *Lacey v. Maricopa County*, 693 F.3d 896, 918 (9th Cir. 2012) (citation omitted);  
22 *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 367 (2017) (“The Fourth Amendment prohibits  
23 government officials from detaining a person in the absence of probable cause.”). “Probable

1 cause exists if the arresting officers had knowledge and reasonably trustworthy information of  
2 facts and circumstances sufficient to lead a prudent person to believe that [the arrestee] had  
3 committed or was committing a crime.” *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1097-98  
4 (9th Cir. 2013) (citation and quotation marks omitted).

5 Plaintiff alleges that he did not make a false statement, but he does not specifically allege  
6 the NHP Officers lacked probable cause to arrest him for walking along Interstate 80.

7 Finally, Plaintiff avers that when he was taken into custody at the WCDF, the NHP  
8 Officers checked him in with omissions from his inmate property inventory form, including his  
9 medications and money. However, he does not allege these items were taken or missing, or that  
10 he did not get his property back when he was released.

11 In sum, Plaintiff still fails to state a colorable claim for relief against the NHP Officers. In  
12 an abundance of caution, Plaintiff should be given one final opportunity to amend as to these  
13 Defendants.

### 14 **3. Three Officers at the WCDF**

15 Plaintiff alleges the first officer was unnecessarily abusive. This is insufficient to assert a  
16 claim for relief against the first WCDF officer.

17 The second officer he accuses of fondling Plaintiff’s genitals during a second search,  
18 while grinning. Plaintiff could arguably state a claim for relief against the second officer, once he  
19 is identified. However, he still does not include sufficient factual detail to support his claim.

20 He avers the third officer ordered a seizure of medications as punishment for Plaintiff  
21 asking for his reading glasses. Plaintiff does not allege he suffered any harm as a result of this  
22 alleged seizure or that he did not get his medications back. Therefore, he fails to state a claim for  
23 relief against the third WCDF officer at this juncture.

1 Finally, Plaintiff refers to evasive questioning and being forced to sit upright in a chair  
2 until he was released the following day, which resulted in sleep deprivation. However, it is  
3 unclear whether he intends to proceed with claims based on these allegations. If so, he does not  
4 include sufficient factual detail to state a claim. Nor does he allege who is responsible for these  
5 alleged violations of his rights.

6 In conclusion, Plaintiff still fails to state a cognizable claim for relief against the three  
7 unidentified WCDF officers. Plaintiff should be given one final opportunity to amend to state a  
8 claim against these Defendants.

#### 9 **4. Washoe County Administrators of the Sparks Justice Court**

10 Plaintiff includes no allegations with respect to these unidentified Defendants. As  
11 Plaintiff has already been given leave to amend in this regard, these Defendants should be  
12 dismissed with prejudice.

#### 13 **5. Bailiff Department Supervisor Officer Scott Kreber**

14 Plaintiff alleges Kreber made false statements and accusations to force Plaintiff to accept  
15 a plea.

16 Plaintiff's conclusory allegations against Kreber lack any factual basis to support a  
17 colorable claim for relief. Plaintiff does not allege what false statements or accusations were  
18 made that forced Plaintiff to accept a plea or any other detail regarding how Kreber's conduct, as  
19 a bailiff supervisor, forced Plaintiff into accepting a plea.

20 Plaintiff should be given one final opportunity to amend to attempt to state a claim  
21 against Kreber.

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1 above. The second amended complaint must be complete in and of itself without referring or  
2 incorporating by reference any previous complaint. Any allegations, parties, or requests for relief  
3 from a prior complaint that are not carried forwarded in the amended complaint will no longer be  
4 before the court. Plaintiff shall not include any Defendants or claims that have been dismissed  
5 with prejudice. Plaintiff shall clearly title the amended pleading as “SECOND AMENDED  
6 COMPLAINT.” Plaintiff should be cautioned that if he fails to timely file a second amended  
7 complaint within the 30 days, this action may be dismissed.

8 (4) To the extent it is recommended that Plaintiff be given another opportunity to amend,  
9 his request for an extension of time (ECF No. 6) should be **GRANTED**.

10 Plaintiff should be aware of the following:

11 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
12 this Report and Recommendation within fourteen days of being served with a copy of the Report  
13 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s  
14 Report and Recommendation” and should be accompanied by points and authorities for  
15 consideration by the district judge.

16 2. That this Report and Recommendation is not an appealable order and that any notice of  
17 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
18 until entry of judgment by the district court.

19  
20 Dated: November 18, 2024

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22 Craig S. Denney  
23 United States Magistrate Judge